

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions

of the United States Court of Appeals for
the Federal Circuit and the United
States Court of International Trade

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Classification: C92/187

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

General Notices

CHANGE OF ADDRESS FOR CUSTOMS COMMENTS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of change of address.

SUMMARY: The office of the U.S. Customs Service which is responsible for Customs regulations relocated on November 9. Consequently, the address to which comments regarding pending Customs proposals should be sent and the address at which comments may be inspected is different than that set forth in previous Federal Register documents published by Customs. This document gives notice of the new addresses.

FOR FURTHER INFORMATION CONTACT: Joseph Clark, Regulations Branch, (202) 482-6970.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Office of Regulations and Rulings (OR&R) of the U.S. Customs Service was relocated on November 9, 1992. The Regulations Branch, which is responsible for preparing Federal Register documents for Customs, is part of OR&R. OR&R is now located at Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington, D.C.

VIEWING COMMENTS

As of November 9, 1992, anyone wishing to view comments that were addressed to the Regulations and Disclosure Law Branch or Regulations Branch of Customs on a proposal published in the Federal Register should come to the address set forth in the preceding paragraph. It is highly recommended that you call Joseph Clark at (202) 482-6970 before coming and schedule an appointment to view the comments.

SUBMITTING COMMENTS

Even though OR&R has moved out of Customs Headquarters building at 1301 Constitution Avenue, N.W., the mailing address to send all comments regarding pending Customs proposals that have appeared in the Federal Register shall remain for the time being at 1301 Constitution Avenue, N.W. An indication should be made in the address, however, that OR&R is at Franklin Court.

The address to submit comments is as follows:

U.S. Customs Service
Office of Regulations and Rulings
Regulations Branch
Franklin Court
1301 Constitution Avenue, N.W.
Washington, D.C. 20229.

Dated: November 18, 1992.

KATHRYN C. PETERSON,
Chief,
Regulations Branch.

[Published in the Federal Register, November 24, 1992 (57 FR 55303)]

PRIVACY ACT OF 1974, NEW SYSTEM OF RECORDS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed system of records.

SUMMARY: This notice sets forth a system of records, the Pacific Basin Reporting Network. The purpose of the system of records is to implement a law enforcement data base containing records with identifying and other relevant information on vessels, aircraft, and individuals traveling in or through the Pacific Basin area, and where appropriate to disclose this information to other domestic and foreign agencies which have an interest in this information.

DATES: Comments must be received on or before December 21, 1992.

ADDRESSES: Comments must be submitted to the Office of Enforcement, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 3401, Washington, D.C. 20229. Comments received will be available for inspection at the same address in the Office of Enforcement, U.S. Customs Service, between the hours of 9 a.m. and 4:30 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Marc Gwaltney, Office of Enforcement, (310) 980-3130; John Shirley, Special Agent in Charge, (808) 541-2774.

SUPPLEMENTARY INFORMATION: The Pacific Basin Reporting Network is established to collect and store information concerning the activities of vessels, aircraft and individuals traveling in or through the Pacific Basin area and where appropriate and compatible with the

purpose for which these records are collected, to disclose this information to other domestic and foreign agencies which have an interest in this information. The Pacific Basin area includes the countries of Northeast Asia, Southeast Asia, the Pacific Islands, both independent and non-independent, Australia, New Zealand, United States, Canada and Mexico.

The Customs Service has a wide variety of investigatory responsibilities including investigation of smuggling, narcotics trafficking, illegal importations, violations of neutrality acts and many others. Among the activities in which Customs is involved is the clearance of individuals, aircraft, vessels and their crews and passengers into the Customs territory of the United States. In particular, Customs will maintain these records to further the Government's investigative, intelligence, interdiction, enforcement and prosecution efforts through collation, analysis and dissemination of the data to Pacific Basin Reporting Network participants. Since the system of records includes subject files which are necessarily retrieved by personal identifier, the Privacy Act of 1974, as amended 5 U.S.C. 552a, requires the Customs Service to give general notice and seek public comments.

In a separate publication, Customs is also giving public notice of a proposed rule to exempt this system of records from certain provisions of 5 U.S.C. 552a pursuant to subsections (j)(2), and (k)(2) of the same section.

Dated: October 16, 1992.

DEBORAH M. WITCHEY,
Deputy Assistant Secretary (Administration).

TREASURY/CUSTOMS .171

System Name:

Pacific Basin Reporting Network.

System Location:

Office of the Special Agent in Charge, U.S. Customs Service, 300 Ala Moana Boulevard, Room 6127, Honolulu, Hawaii 50104.

Categories of Individuals Covered by the System:

Records are maintained on masters, operators, pilots, crew members and passengers of vessels and aircraft traveling in or through the Pacific Basin. The Pacific Basin area includes the countries of Northeast Asia, Southeast Asia, the Pacific Islands (both independent and non-independent), Australia, New Zealand, United States, Canada and Mexico.

Categories of Records in the System:

This system of records includes information pertaining to individuals, aircraft and vessel reporting; vessel/aircraft name and registration

numbers; descriptions of vessels and aircraft; departure and arrival information; and destination locations. Information about individuals includes name, date of birth, place of birth, physical description, nationality, passport number, address and occupation.

Authority for Maintenance of this System:

19 U.S.C. 1433, 1459, and 1628; 49 U.S.C. App. 1590.

Purposes:

The purposes of the Pacific Basin Reporting Network is to implement a law enforcement data base containing records with identifying and other relevant information on vessels, aircraft and individuals traveling in or through the Pacific Basin area, and where appropriate to disclose this information to other domestic and foreign agencies which have an interest in this information.

Routine Uses of Records Maintained in this System, Including Categories of Users and the Purposes of Such Uses:

These records and information in the records may be used: (a) To disclose pertinent information to appropriate federal agencies and to state, local/ territorial or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation or order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (b) to disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in response to a subpoena, where relevant or potentially relevant to the proceedings, or in connection with criminal law proceedings; (c) to provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; and (d) to provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING,
AND DISPOSING OF RECORDS IN THE SYSTEM**

Storage:

Records are maintained on tape, magnetic disc and hard copy.

Retrievability:

By name (individual, master or pilot); unique identifiers (date of birth, passport number, and aircraft/vessel registration number); date, place of destination; port of registry; or vessel description.

Safeguards:

All officials accessing the system of records have had a full field background check as required and access data on a need-to-know basis only. Procedural and physical safeguards are utilized such as accountability,

receipt records and specialized communications security. The data system has an internal mechanism designed to restrict access to authorized officials. Hard-copy records are held in steel cabinets and are maintained according to the requirements of the U.S. Customs Reports Manual and Customs Security Manual. Access is limited by visual controls and/or lock system. During normal working hours, files are attended by responsible officials; they are locked during non-working hours and the building is patrolled by uniformed security guards.

Retention and Disposal:

The records are periodically updated to reflect changes and maintained as long as needed, then shredded and destroyed.

System Manager and Address:

Office of the Special Agent in Charge, U.S. Customs Service, 300 Ala Moana Boulevard, room 6127, Honolulu, Hawaii 50104.

Notification Procedures:

Pursuant to 5 U.S.C. 552a(j)(2), and (k)(2), this system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

Record Access Procedures:

See "Notification Procedures" above.

Contesting Record Procedures:

See "Notification Procedures" above.

Record Source Categories:

See "Categories of Individuals covered by the System" above. The system contains material for which sources need not be reported.

System Exempted from Certain Provisions of the Act:

This system is exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H) and (I), (e)(5) and (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).



U.S. Customs Service

Proposed Rulemakings

19 CFR Part 146

PETROLEUM REFINERIES IN FOREIGN TRADE SUBZONES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule; notice of meeting; extension of comment period.

SUMMARY: This document gives notice of a public meeting Customs will hold on proposed amendments to its Regulations which would add special procedures and requirements governing the operations of crude petroleum refineries approved as foreign trade subzones. In addition, the document extends the time within which interested members of the public may submit written comments on the proposed rule.

DATES: The meeting will be held on December 15 and 16, 1992, at 9:00 a.m. Notice of intention to attend the meeting should be received by Customs by December 8, 1992. Written comments on the proposed rule must be submitted on or before February 8, 1993.

ADDRESSES: The meeting will be held at Customs Headquarters, Room 3428, at 1301 Constitution Avenue, NW., Washington, D.C. Written notification of intention to attend the meeting should be sent to: U.S. Customs Service, Office of Regulatory Audit, Room 2311, ATTN: Louis Hryniw, 1301 Constitution Avenue, NW., Washington, D.C. 20229. Comments on the proposed rule may be submitted to U.S. Customs Service, ATTN: Regulations Branch, Franklin Court, 1301 Constitution Avenue, NW., Washington, D.C., and will be available for inspection at 1099 14th Street, NW., Suite 4000, Washington, D.C. All comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days at the latter address above.

FOR FURTHER INFORMATION CONTACT: Louis Hryniw, Office of Regulatory Audit, (202) -927-1100.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Customs published a document in the Federal Register on August 10, 1992 (57 FR 35530), inviting the public to comment on proposed amend-

ments to its regulations, which would add special procedures and requirements governing the operations of crude petroleum refineries approved as foreign trade subzones, in implementation of § 9002 of the Technical and Miscellaneous Revenue Act of 1988, which amended the Foreign Trade Zones Act, to make specific provision for petroleum refinery subzones. In a document published in the Federal Register on September 14, 1992 (57 FR 41896), Customs extended the public comment period on the proposed amendments until December 8, 1992.

A meeting will be held by Customs on December 15 and 16, 1992, at 9:00 a.m., at Customs Headquarters, Room 3428, 1301 Constitution Avenue, NW., Washington, D.C., to solicit further input from interested members of the importing community, in order to better inform and assist the agency in fashioning a final rule document which complies with the law and maintains effective Customs control over the subzone refineries, while minimizing interference with their efficient operation. In this regard, matters already raised by several refinery subzones expressing concern over the proposed rule, on which Customs is especially interested in receiving additional guidance are as follows:

1. Any factual and/or legal basis for including in the definition of "petroleum refinery" a plant that does not refine petroleum.
2. Quantitative examples illustrating the concept of "producibility".
3. A quantitative description illustrating the attribution of product to feedstock using the producibility concept specifically under a 30-day manufacturing period.
4. Reasons to support the view that volume measurement would provide accurate feedstock balance data, assuming that weight were not used as a measurement of feedstock inventories.
5. A definition for "protection of the revenue", with a legal justification and quantitative examples provided therefore.

Since the meeting, as noted, is scheduled for December 15 and 16, 1992, Customs has also determined that an extension of the comment period for an additional 60 days is warranted (until February 8, 1993).

Parties interested in attending the meeting are requested to inform Customs of their intention to do so, in order to assure that adequate accommodations are provided. Notice of this intention should be received by December 8, 1992. Such notice may be given in writing or telephonically. Written notices should be sent to U.S. Customs Service, Room 2311, 1301 Constitution Avenue, NW., Washington, D.C. 20229. Telephone replies may be made to Mr. Hryniw at (202)-927-1100.

Dated: November 18, 1992.

SAMUEL H. BANKS,
*Assistant Commissioner,
Office of Commercial Operations.*

31 CFR Part 1

PRIVACY ACT OF 1974, AS AMENDED; EXEMPTION OF
SYSTEM OF RECORDS FROM CERTAIN PROVISIONS

AGENCY: Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, Customs is proposing to exempt a system of records, the Pacific Basin Reporting Network (Treasury/Customs. 171) from certain provisions of the Privacy Act. The exemptions are intended to increase the value of the system of records for law enforcement purposes, to comply with legal prohibitions against the disclosure of certain kinds of information, and to protect the privacy of individuals identified in the system of records.

DATES: Comments must be received no later than December 21, 1992.

ADDRESSES: Comments (preferably in triplicate) must be submitted to the U.S. Customs Service, Regulations and Disclosure Law Branch, Room 2119, 1301 Constitution Avenue NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Kathryn C. Peterson, Chief, Regulations and Disclosure Law Branch, U.S. Customs Service, (202) 566-8237.

SUPPLEMENTARY INFORMATION: As a law enforcement agency, the U.S. Customs Service has a wide variety of investigatory responsibilities including, for example, investigations of smuggling, narcotics trafficking, the importation of prohibited or restricted merchandise, violations of the Neutrality Act, investigations of organized crime activities, commercial fraud investigations and many others. Among the activities in which Customs is involved is the clearance of aircraft and vessels and their crews into the Customs territory of the United States. The purpose of the Pacific Basin Reporting Network system of records is to collect and store information with respect to potential violations of Customs and other domestic and international laws and where appropriate to disclose this information to other law enforcement agencies which have an interest in this information. Authority for the system is provided by 5 U.S.C. 301; 19 U.S.C. 1433, 1459; 49 U.S.C. App. 1509; Treasury Department Order No. 165, Revised, as amended.

Pursuant to the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury is today publishing separately a notice of a system of records, the Pacific Basin Reporting Network—Treasury/Customs. 171. This system of records will assist Customs in the proper performance of its functions under the statutes and Treasury Department Order No. 165 cited above.

Under 5 U.S.C. 552a(j)(2), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C.

552a if the system of records is maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (a) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (b) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (c) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

In addition, under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) set forth above.

Accordingly, pursuant to the authority contained in section 1.23(c) of the regulations of the Department of the Treasury (31 CFR 1.23(c)), the Commissioner of Customs intends to exempt the Pacific Basin Reporting Network from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2), (k)(2), and 31 CFR 1.23(c). The specific provisions and the reasons for exempting the system of records from each specific provision of 5 U.S.C. 552a are set forth below as required by 5 U.S.C. 552a (j)(2) and (k)(2).

GENERAL EXEMPTION UNDER 5 U.S.C. 552a(j)(2)

Pursuant to 5 U.S.C. 552a(j)(2), the Commissioner of Customs proposes to exempt the Pacific Basin Reporting Network from the following provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a(c) (3) and (4); (d) (1), (2), (3) and (4); (e) (2), (3), (4) (G), (H), and (I); (e) (5) and (8); (f) and (g).

SPECIFIC EXEMPTIONS UNDER 5 U.S.C. 552a(k)(2)

To the extent the exemption under 5 U.S.C. 552a(j)(2) does not apply to the Pacific Basin Reporting Network, the Commissioner of Customs proposes to exempt the Pacific Basin Reporting Network from the following provisions of 5 U.S.C. 552a pursuant to 5 U.S.C. 552a(k)(2): 5 U.S.C. 552a(c) (3) and (4); (d) (1), (2), (3) and (4); (e) (1), (2), (3), (5) and (8); (e)(4) (G), (H) and (I); and (g).

REASONS FOR EXEMPTION UNDER 5 U.S.C. 552a (j)(2) AND (k)(2)

Although more specific explanations are contained in 31 CFR 1.36 under the heading United States Customs Service, the following explanations for exemptions will be helpful.

(1) Pursuant to 5 U.S.C. 552a(4)(G) and (f)(1), individuals may inquire whether a system of records contains records pertaining to them. Application of these provisions to the Pacific Basin Reporting Network would give individuals an opportunity to learn whether they have been identified as either suspects or subjects of investigation. As further described in the following subsection, access to such knowledge would impair the Office of Enforcement's ability to carry out its mission, since individuals could take steps to avoid detection; inform associates that investigation is in progress; learn whether they are only suspects or identified as law violators; begin, continue, or resume illegal conduct upon learning that they are not identified in the system of records; or destroy evidence needed to prove the violation.

(2) Pursuant to 5 U.S.C. 552a(d)(1), (e)(4)(H) and (f)(2), (3), and (5), individuals may gain access to records pertaining to them. The application of these provisions to the Pacific Basin Reporting Network would compromise the Office of Enforcement's ability to provide useful tactical and strategic information to law enforcement agencies. Permitting access to records contained in the Pacific Basin Reporting Network would provide individuals with information concerning the nature of any current investigations concerning them and would enable them to avoid detection or apprehension. By discovering the collection of facts which would form the basis of their arrest, by enabling them to destroy or alter evidence of criminal conduct that would form the basis for their arrest, and by learning that criminal investigators had reason to believe that a crime was about to be committed, they could delay the commission of the crime or change the scene of the crime to a location which might not be under surveillance.

Permitting access to either on-going or closed investigative files would also reveal investigative techniques and procedures, the knowledge of which could enable individuals planning crimes to structure their operations in such a way as to avoid detection or apprehension and thereby neutralize law enforcement officers' established investigative tools and procedures.

Permitting access to investigative files and records could, moreover, disclose the identity of confidential sources and informers and the nature of the information supplied and thereby endanger the physical safety of sources of information by exposing them to reprisals for having provided the information. Confidential sources and informers might refuse to provide criminal investigators with valuable information if they could not be secure in the knowledge that their identities would not be revealed through disclosure of either their names or the nature of the information they supplied. Loss of access to such sources would seriously impair the Office of Enforcement's ability to carry out its mandate.

Furthermore, providing access to records contained in the Pacific Basin Reporting Network could reveal the identities of undercover law enforcement officers who compiled information regarding the individual's

criminal activities and thereby endanger the physical safety of those undercover officers or their families by exposing them to possible reprisals.

By compromising the law enforcement value of the Pacific Basin Reporting Network for the reasons outlined above, permitting access in keeping with these provisions would discourage other law enforcement and regulatory agencies, foreign and domestic, from freely sharing information with the Office of Enforcement and thus would restrict the Office's access to information necessary to accomplish its mission most effectively.

(3) Pursuant to 5 U.S.C. 552a(d) (2), (3), and (4), (e)(4)(H), and (f)(4) an individual may request amendment of a record pertaining to him or her and the agency must either amend the record, or note the disputed portion of the record and provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since these provisions depend on the individual's having access to his or her records, and since these rules propose to exempt the Pacific Basin Reporting Network from provisions of 5 U.S.C. 552a, as amended, relating to access to records, for the reasons set out in (2) above, these provisions should not apply to the Pacific Basin Reporting Network.

(4) Under 5 U.S.C. 552a(c)(4) an agency must inform any person or other agency about any correction or notation of dispute that the agency made in accordance with 5 U.S.C. 552a(d) to any record that the agency disclosed to the person or agency if an accounting of the disclosure was made. Since this provision depends on an individual's having access to and an opportunity to request amendment of records pertaining to him or her, and since these rules propose to exempt the Pacific Basin Reporting Network from the provisions of 5 U.S.C. 552a relating to access to and amendment of records, for the reasons set out in paragraph (3) above, this provision ought not apply to the Pacific Basin Reporting Network.

(5) Under 5 U.S.C. 552a(c)(3) an agency is required to make an accounting of disclosure of records available to the individual named in the record upon his or her request. The accounting must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient.

The application of this provision would impair the ability of law enforcement agencies outside the Department of the Treasury to make effective use of information provided by the Pacific Basin Reporting Network. Making an accounting of disclosure available to the subjects of an investigation would alert those individuals to the fact that another agency is conducting an investigation into their criminal activities and could reveal the geographic location of the other agency's investigation, the nature and purpose of that investigation, and dates on which that investigation was active. Violators possessing such knowledge would be able to take measures to avoid detection or apprehension by altering their operations, by transferring their criminal activities to other geo-

graphical areas, or by destroying or concealing evidence that would form the basis for arrest.

Moreover, providing accounting to the subjects of investigations would alert them to the fact that the Pacific Basin Reporting Network has information regarding their criminal activities and could inform them of the general nature of that information. Access to such information could reveal the operation of the Office of Enforcement's information gathering and analysis systems and permit violators to take steps to avoid detection or apprehension.

(6) Under 5 U.S.C. 552a(e)(4)(I) an agency is required to publish a general notice listing the categories of sources for information contained in a system of records. The application of this provision to the Pacific Basin Reporting Network could compromise its ability to provide useful information to law enforcement agencies, since revealing sources for the information could disclose investigative techniques and procedures, result in threats or reprisals against informers by the subjects of investigations, and cause informers to refuse to give full information to criminal investigators for fear of having their identities as sources disclosed.

(7) Under 5 U.S.C. 552a(e)(2) an agency is required to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of this provision to the Reporting Network would impair the ability to collate, analyse, and disseminate investigative, intelligence and enforcement information.

Most information collected about an individual under criminal investigation is obtained from third parties, such as witnesses and informers. It is usually not feasible to rely upon the subject of the investigation as a source for information regarding his criminal activities. An attempt to obtain information from the subject of a criminal investigation will often alert that individual to the existence of an investigation, thereby affording the individual an opportunity to attempt to conceal his criminal activities so as to avoid apprehension. In certain instances, the subject of a criminal investigation is not required to supply information to criminal investigators as a matter of legal duty. During criminal investigations it is often a matter of sound investigative procedure to obtain information from a variety of sources to verify information already obtained.

(8) Pursuant to 5 U.S.C. 552a(e)(3) an agency must inform each individual whom it asks to supply information, on the form that it uses to collect the information or on a separate form that the individual can retain, the agency's authority for soliciting the information; whether disclosure of information is voluntary or mandatory; the principal purposes for which the agency will use the information; and the effects on the individual of not providing all or part of the information. The Pacific Basin Reporting Network should be exempted from this provision

to avoid impairing the Office of Enforcement's ability to collect and collate investigative intelligence and enforcement data.

Confidential sources or undercover law enforcement officers often obtain information under circumstances in which it is necessary to keep the true purpose of their actions secret so as not to let the subject of the investigation or his or her associates know that a criminal investigation is in progress. If it became known that the undercover officer was assisting in a criminal investigation, the officer's physical safety could be endangered through reprisal, and that officer may not be able to continue working on the investigation.

Further, individuals for personal reasons often would feel inhibited in talking to a person representing a criminal law enforcement agency but would be willing to talk to a confidential source or undercover officer whom they believe not to be involved in law enforcement activities. Providing a confidential source of information with written evidence that he or she was a source, as required by this provision, could increase the likelihood that the source of information would be subject to retaliation by the subject of the investigation. Further, application of the provision could result in an unwarranted invasion of the personal privacy of the subject of the criminal investigation, where further investigation reveals that the subject was not involved in any criminal activity.

(9) Pursuant to 5 U.S.C. 552a(e)(5) an agency must maintain all records it uses in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination.

Since 5 U.S.C. 552a(a)(3) defines "maintain" to include "collect" and "disseminate", application of this provision to the Pacific Basin Reporting Network would hinder the initial collection of any information that could not, at the moment of collection, be determined to be accurate, relevant, timely, and complete. Similarly, application of this provision would seriously restrict the Pacific Basin Reporting Network's ability to disseminate information pertaining to a possible violation of law to law enforcement and regulatory agencies. In collecting information during a criminal investigation, it is often impossible or unfeasible to determine accuracy, relevance, timeliness, or completeness prior to collection of the information.

Information that may initially appear inaccurate, irrelevant, untimely, or incomplete may, when collected and analyzed with other available information, become more pertinent as an investigation progresses. In addition, application of this provision could seriously impede criminal investigators and intelligence analysts in the exercise of their judgment in reporting results obtained during criminal investigations.

(10) Under 5 U.S.C. 552a(e)(8) an agency must make reasonable efforts to serve notice on an individual when the agency makes any record on the individual available to any person under compulsory legal process, when such process becomes a matter of public record. The Pacific Basin Reporting Network should be exempted from this provision to

avoid revealing investigative techniques and procedures outlined in those records and to prevent revelation of the existence of an ongoing investigation where there is need to keep the existence of the investigation secret.

(11) Under 5 U.S.C. 552a(g) civil remedies are provided to an individual when an agency wrongfully refuses to amend a record or to review a request for amendment, when an agency wrongfully refuses to grant access to a record, when an agency fails to maintain accurate, relevant, timely, and complete records which are used to make a determination adverse to the individual, and when an agency fails to comply with any other provision of 5 U.S.C. 552a so as to adversely affect the individual. The Reporting Network should be exempted from this provision to the extent that the civil remedies may relate to this provision of 5 U.S.C. 552a from which these rules propose to exempt the Pacific Basin Reporting Network, since there should be civil remedies for failure to comply with provisions from which the Reporting Network is exempted. Exemption from this provision will also protect the Reporting Network from baseless civil court actions that might hamper its ability to collate, analyze, and disseminate investigative intelligence, and law enforcement data.

COMMENTS

Consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, D.C.

After consideration of the comments received, notice will be given concerning the exempt status of this system of records. If the Commissioner of Customs finally exempts as herein proposed, a conforming amendment to 31 CFR 1.36 will also be published.

Dated: October 16, 1992.

CAROL HALLETT,
Commissioner of Customs.

Approved: October 29, 1992.

PETER K. NUNEZ,

Assistant Secretary (Enforcement).

DEBORAH M. WITCHEY,

Deputy Assistant Secretary (Administration).

[Published in the Federal Register, November 19, 1992 (57 FR 54539)]

1841

United States Court of International Trade

One Federal Plaza
New York, N.Y. 10007

Chief Judge
Dominick L. DiCarlo

Judges

Gregory W. Carman
Jane A. Restani
Thomas J. Aquilino, Jr.

Nicholas Tsoucalas
R. Kenton Musgrave
Richard W. Goldberg

Senior Judges

James L. Watson
Herbert N. Maletz
Bernard Newman
Samuel M. Rosenstein

Clerk

Joseph E. Lombardi



Decisions of the United States Court of International Trade

(Slip Op. 92-201)

FEDERAL-MOGUL CORP., PLAINTIFF, AND TORRINGTON CO., PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT, AND SKF USA INC., SKF FRANCE S.A., SKF GMBH, SKF INDUSTRIE, S.P.A., SKF (U.K.) LTD., SKF SVERIGE, AB, FAG KUGELFISCHER GEORG SCHAFER KGAA, FAG CUSCINETTI S.P.A., FAG (UK) LTD., BARDEN CORP. (UK) LTD., FAG BEARINGS CORP., BARDEN PRECISION BEARINGS CORP., RHP BEARINGS, RHP BEARINGS INC., PEER BEARING CO., KOYO SEIKO CO., LTD., AND KOYO CORP. OF U.S.A., DEFENDANT-INTERVENORS

Court No. 92-06-00422

FEDERAL-MOGUL CORP., PLAINTIFF, AND TORRINGTON CO., PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT, AND SKF USA INC. AND SKF SVERIGE, AB, DEFENDANT-INTERVENORS

Court No. 92-07-00506

FEDERAL-MOGUL CORP., PLAINTIFF, AND TORRINGTON CO., PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT, AND SKF USA INC. AND SKF INDUSTRIE, S.P.A., DEFENDANT-INTERVENORS

Court No. 92-07-00507

FEDERAL-MOGUL CORP., PLAINTIFF, AND TORRINGTON CO., PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT, AND NTN BEARING CORP. OF AMERICA, AMERICAN NTN BEARING MANUFACTURING CORP., NTN CORP., KOYO SEIKO CO., LTD., AND KOYO CORP. OF U.S.A., DEFENDANT-INTERVENORS

Court No. 92-07-00508

FEDERAL-MOGUL CORP., PLAINTIFF, AND TORRINGTON CO., PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT, AND SKF USA INC. AND SKF FRANCE S.A., DEFENDANT-INTERVENORS

Court No. 92-07-00509

FEDERAL-MOGUL CORP., PLAINTIFF, AND TORRINGTON CO., PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT, AND SKF USA INC., SKF GMBH, NTN BEARING CORP. OF AMERICA, AND NTN KUGELLAGERFABRIK (DEUTSCHLAND) GMBH, DEFENDANT-INTERVENORS

Court No. 92-07-00518

FEDERAL-MOGUL CORP., PLAINTIFF, AND TORRINGTON CO., PLAINTIFF-INTERVENOR *v.* UNITED STATES, DEFENDANT, AND SKF USA INC. AND SKF (U.K.) LTD., DEFENDANT-INTERVENORS

Court No. 92-07-00519

Plaintiff moves pursuant to Rule 42(a) of the Rules of this Court to consolidate Court Nos. 92-06-00422, 92-07-00506, 92-07-00507, 92-07-00508, 92-07-00509, 92-07-00518 and 92-07-00519 under the name *Federal-Mogul Corp. v. United States*, Consol. Court No. 92-06-00422.

Held: Defendant currently has filed a motion to correct certain ministerial errors in the final determination at issue in these cases. Consolidation at this time would therefore be premature.

[Plaintiff's motion to consolidate is denied without prejudice.]

(Dated November 5, 1992)

Frederick L. Ikenson, P.C. (Frederick L. Ikenson, J. Eric Nissley, Joseph A. Perna, V and Larry Hampel) for plaintiff Federal-Mogul Corporation.

Stewart and Stewart (Eugene L. Stewart, Terence P. Stewart, James R. Cannon, Jr., Wesley K. Caine, and Robert A. Weaver) for plaintiff-intervenor The Torrington Company.

Stuart M. Gerson, Assistant Attorney General; *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice (*Marc E. Montalbaine*); of counsel: *Stephen J. Claeys, Craig R. Giesze and Dean A. Pinkert*, Attorney-Advisors, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, for defendant.

Howrey & Simon (Herbert C. Shelley, Alice A. Kipel, Juliana M. Cofrancesco and Thomas J. Trendl) for defendant-intervenors SKF USA Inc., SKF France S.A., SKF GmbH, SKF Industrie, S.p.A., SKF (U.K.) Limited and SKF Sverige, AB.

Covington & Burling (Harvey M. Applebaum and David R. Grace) for defendant-intervenors RHP Bearings and RHP Bearings Inc.

Venable, Baetjer, Howard & Civiletti (John M. Gurley and Lindsay B. Meyer) for defendant-intervenor Peer Bearing Company.

Powell, Goldstein, Frazer & Murphy (Peter O. Suchman, Neil R. Ellis and T. George Davis) for defendant-intervenors Koyo Seiko Co., Ltd. and Koyo Corporation of U.S.A.

Grunfeld, Desiderio, Lebowitz & Silverman (Max F. Schutzman and Andrew B. Schroth) for defendant-intervenors FAG Kugelfischer Georg Schafer KGaA, FAG Cuscinetti SpA, FAG (UK) Limited, Barden Corporation (UK) Limited, FAG Bearings Corporation and Barden Precision Bearings Corporation.

Barnes, Richardson & Colburn (Robert E. Burke, Donald J. Unger, Kazumune V. Kano and Diane A. MacDonald) for defendant-intervenors NTN Bearing Corporation of America, American NTN Bearing Manufacturing Corporation, NTN Kugellagerfabrik (Deutschland) GmbH and NTN Corporation.

OPINION

TSOUCALAS, Judge: Plaintiff, Federal-Mogul Corporation ("Federal-Mogul"), moves pursuant to Rule 42(a) of the Rules of this Court to consolidate Court Nos. 92-06-00422, 92-07-00506, 92-07-00507,

92-07-00508, 92-07-00509, 92-07-00518 and 92-07-00519 under the name *Federal-Mogul Corp. v. United States*, Consol. Court No. 92-06-00422.

Federal-Mogul argues that consolidation of these cases is warranted because these cases challenge the Department of Commerce, International Trade Administration's ("ITA") final results in the second administrative review of imports of antifriction bearings from six of the nine countries subject to various antidumping duty orders. *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; et. al; Final Results of Antidumping Duty Administrative Reviews ("Final Results")*, 57 Fed. Reg. 28,360 (1992). In this administrative review the ITA issued only one notice of the Final Results which covered all the countries and imports subject to the contested review. *Id.*

As a result, Federal-Mogul initially filed one case challenging the Final Results for the six countries for which Federal-Mogul wishes to obtain judicial review. In order to protect itself procedurally, Federal-Mogul also filed six separate actions covering the Final Results for each of the six countries for which Federal-Mogul has an interest in obtaining judicial review. Federal-Mogul now wishes to consolidate all seven cases.

The global action commenced by Federal-Mogul covering all six countries contains all of the allegations contained in the six separate country specific actions filed by Federal-Mogul. *Plaintiff's Motion to Consolidate* at 3-4.

Defendant-intervenors, FAG Kugelfischer Georg Schafer KGaA, FAG Cuscinetti SpA, FAG (UK) Limited, Barden Corporation (UK) Limited, FAG Bearings Corporation, Barden Precision Bearings Corporation, RHP Bearings and RHP Bearings Inc., SKF USA Inc., SKF France S.A., SKF GmbH, SKF Industrie, S.p.A., SKF (U.K.) Limited and SKF Sverige, AB, support Federal-Mogul's motion to consolidate these actions. Defendant-intervenors NTN Bearing Corporation of America, American NTN Bearing Manufacturing Corporation, NTN Kugellagerfabrik (Deutschland) GmbH, NTN Corporation, Koyo Seiko Co., Ltd. and Koyo Corporation of U.S.A. have not responded to Federal-Mogul's motion to consolidate.

Defendant opposes Federal-Mogul's motion to consolidate. Defendant points out that it filed motions seeking leave of this Court to correct certain alleged ministerial errors in these and other actions challenging these Final Results on September 1, 1992. If the Court grants defendant's motion, some of the issues in these actions may be resolved and other issues may develop which may necessitate the filing of amended pleadings. *Defendant's Memorandum in Opposition to Plaintiff's Motion to Consolidate* at 2.

Plaintiff's motion is filed under Rule 42(a) of this Court which states:

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions

consolidated under a consolidated complaint; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

The rule gives the court broad discretion to grant or deny consolidation. *Manuli, USA, Inc. v. United States*, 11 CIT 272, 277, 659 F. Supp. 244, 247 (1987).

This Court believes that judicial economy will be better served by denying Federal-Mogul's motion to consolidate at this time. The issues raised in defendant's motion for leave to correct ministerial errors in the challenged Final Results need to be resolved prior to any decision on whether to consolidate these cases and, if so, how best to consolidate them.

Therefore, this Court denies Federal-Mogul's motion for consolidation without prejudice. Federal-Mogul, and all other parties to these actions, may file a new motion to consolidate these actions after the ministerial errors issue has been resolved.

(Slip Op. 92-202)

LOCAL 116, INTERNATIONAL UNION OF ELECTRONIC, ELECTRICAL, SALARIED,
MACHINE AND FURNITURE WORKERS, AFL-CIO, PLAINTIFF *v.* U.S. SECRETARY OF LABOR, DEFENDANT

Court No. 90-08-00437

(Dated November 9, 1992)

ORDER

TSOUCALAS, *Judge*: This Court, following the United States Department of Labor's denial of trade adjustment assistance, having remanded this case on June 25, 1992 to the United States Department of Labor ("Labor") to conduct a more complete investigation, and upon Labor having done so and having issued a Revised Determination concluding that trade adjustment assistance should now be granted, it is hereby

ORDERED that Labor's revised determination is affirmed.

(Slip Op. 92-203)

HOLMES PRODUCTS CORP. AND ESTEEM INDUSTRIES LTD., PLAINTIFFS *v.*
UNITED STATES, DEFENDANT

Court No. 91-12-00906

(Dated November 12, 1992)

JUDGMENT

RESTANI, *Judge*: Plaintiff objects to language and reasoning of the remand decision of the Commerce Department in this matter.

The defendant has complied with the court's remand order, but offers reasons in support of its previous determination inconsistent with the reasons given on the record for its previous determination. Nonetheless, the government has not requested rehearing. In addition, pursuant to the court's opinion defendant had the opportunity to choose any reasonable method which would avoid double counting and even had the option of demonstrating that double counting could not be avoided by any reasonable method. In fact, Commerce rejected at least one potential method, use of petitioner's prices as BIA. Accordingly, despite the verbiage of both parties, the court concludes that the remand results are not rejected by plaintiffs and represent Commerce's attempt to exercise its discretion in a manner consistent with the court's previous decision herein.

Accordingly, it is hereby ordered that Commerce's remand determination is sustained.

ABSTRACTED CLASSIFI

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| | 6201.93.30 7.6% | Agreed statement of facts | Not stated Men's 100% nylon anoraks |

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